IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 932 of 1998

with

SPECIAL CIVIL APPLICATION No 1379 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement? No.

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge? No.

ATUL PRODUCTS LIMITED

Versus

ANANTRAY H DESAI

Appearance:

1. Special Civil Application No. 932 of 1998

NANAVATI ASSOCIATES for Petitioner

MR HK RATHOD for Respondent No. 1

2. Special Civil ApplicationNo 1379 of 1998

MR HK RATHOD for Petitioner

MR KH NANAVATI for Respondent

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision:21/08/98

CAV JUDGEMENT

Rule. Mr. K.H. Nanavati, learned Senior Counsel, waives service of notice of rule on behalf of respondent in Petition No.1379/98, Mr. H.K. Rathod, learned advocate waives service of notice of rule on behalf of respondent in Petition No.932/98.

2. These two petitions are filed respectively by the employer and the workman against the award passed by the Learned Labour Court of Valsad in Reference No.2125/90 on 30.5.97. As these two petitions are against one and the same award, they are heard together with the consent of the parties and they are being disposed of by this common judgment.

3. Anantray H. Desai-petitioner in Petition No.1379/98 and respondent in Petition No.932/98 was working as a Lab-Chemist in Laboratory Section of Atul Products Limited-the petitioner in Petition No.932/98. The said workman was in service for about 24 years till the year 1989. On 16.10.1989 in the evening when the workman was leaving the factory premises after the days work it was found by the watchman that two small empty plastic containers were being taken away by the said workman. On questioning by the security personnel, the workman had disclosed that those plastic containers were lying in the scrap material but he honestly told that he had not obtained any permission of the Superior Officer to take them away. The said plastic containers were very small and worth only Rs.2/-. On workman replying that he had not obtained the permission of the Superior Officer, the security personnel informed about the same to his Superior. Thereafter a departmental enquiry was held against the workman. In the departmental enquiry he was found guilty of misconduct of taking away the plastic containers without the permission of the Superior Officer. He was therefore dismissed from service on 4.4.1990.

4. The workman thereafter raised an industrial dispute regarding his dismissal and the same was referred to the Labour Court of Valsad bearing Reference No.2125/90. The Labour Court found that the workman was rightly found guilty of misconduct levelled against him. But found that the punishment of dismissal from service was disproportionate to the misconduct. He, therefore, interfered with the punishment. But the Labour Court found that commission of misconduct committed by the workman was of such a nature that the employer must have lost the confidence. He, therefore, did not order reinstatement of the workman but ordered the employer to

pay all the amount of Rs.2 lakhs and to pay the amount of gratuity and other benefits and the cost of Rs.1,000/-.

5. Being aggrieved by the said order, both the employer and the employee have come before this court by filing these two petitions. It is the contention of the employer that the misconduct committed by the workman was of a very grave nature and there was no justification for interfering with the order of punishment passed by the employer. It is further submitted that the order passed by the Labour Court shows that the Labour Court has also found that the misconduct alleged against the workman was proved. Therefore, the employer seeks interference by this court in the order of the Labour Court and to set aside the order of Labour Court and to maintain the order of dismissal passed by the employer. As against this, it is claim of the workman that the misconduct committed by him was of a very trifling nature. Taking into consideration his 24 years of service, the punishment of dismissal from the service was not at all justified. According to him, as he happened to be the Leader of the workers, the action is taken against him of dismissing him from service. He, therefore, seeks reinstatement in the service with all backwages.

6. Neither in the departmental enquiry nor before the Labour Court, nor before this Court the workman is disputing the incident of 16.10.89. It is an admitted fact that on 16.10.89 when the workman was proceeding towards his house after finishing his days work, it was found that he was carrying on his Scooter two plastic containers worth Rs.2/-. It is also not in dispute that he had not obtained the permission of his Superior Officer or the Factory Manager for taking away the said plastic containers. Similarly, it is not at all in dispute that the said plastic containers were lying in the heap of the scrap material. In the background of the above admitted and undisputed facts, the controversy in question will have to be considered and decided.

7. Mr. K.S. Nanavati, learned advocate for the employer-petitioner vehemently urged before me that when the workman was found committing theft, the Learned Labour Court was not at all justified in interfering with the order of punishment. He submitted that the commission of offence of theft is a very grave and serious nature and for such misconduct, the dismissal from service is only an appropriate and proper punishment. But, in my opinion, the material on record and the admitted facts must be taken into consideration before coming to the conclusion as to whether the workman

in question had committed a grave misconduct or not? As stated earlier, and at the cost of repetition, it must be said that the two plastic containers were worth only Rs.2/- and they were lying in the heap of the scrap material. It must also be mentioned that the evidence of the security personnel who was examined in the departmental inquiry also clearly shows that the said plastic containers were not being stealthily carried out or taken away by the workman by concealing them. He has clearly stated in his statement on oath during the departmental enquiry that the workman was carrying them openly and they were very easily visible. His statement also further shows that when he questioned the workman, the workman was not at all disturbed and workman had also not made any attempt to conceal his conduct or avoided to give any explanation of his conduct. The workman said that the two plastic containers lying in the scrap and he was carrying out the same for his some domestic personal use. The conduct of the workman as disclosed by the evidence of the security personnel clearly indicates and shows that the workman was not acting dishonestly or with any criminal intention. No doubt, he had committed a technical misconduct in not obtaining any permission of his superior for taking them away. It is very pertinent to note that the material which he was taking away was a scrap material. It was neither the product of the industry nor the raw material used by the industry for it's production and the same was treated as scrap by the industry. Similarly, it has come in the inquiry before the Labour Court that the workman in question is working for 24 years and during the whole period of 24 years service, there was not a single incident of putting any blot or allegation of misconduct on him. This background and the service history of the workman will have also to be taken into consideration while considering the misconduct committed by him.

8. Mr. Nanavati, learned advocate has vehemently urged before me that when the workman had committed misconduct in question, it is obvious that the misconduct is such that the employer loses his confidence in his employee. I have already stated earlier that in the circumstances of the incident which has come through the evidence of the security personnel, it is very difficult to hold that the workman had acted dishonestly and with any criminal intention. The misconduct committed by him is of a very trival nature. It is also very pertinent to note that the industry had not said while passing the order of dismissal that the industry had lost faith in him and therefore he was dismissed. The Learned Labour Court has found that the misconduct in question amounts

to a theft and because of the same the employer must have lost confidence in him. It must also be mentioned here that the workman is a Lab-chemist and he was working in the Laboratory section of the said industry and the misconduct committed by him has no connection with his duty and job. At the cost of repetition, it must be said that the material which was found being taken away without permission was neither the product of the industry nor the raw material of industry, nor the costly material. Therefore, in these circumstances, the misconduct committed by the workman have no connection with his job and has also no connection either with the production of the industry or with the raw material used by the industry in its production and the material was also very trifling material. It is very difficult to hold that such misconduct committed by the workman is of such a nature that the employer will loose the confidence in the employee. In order to loose confidence of the employer, it must be shown that the employee was holding a position of confidence and he had betrayed that confidence. From the facts and circumstances of the case, it is very difficult to come to the conclusion that the employer must have lost confidence in the petitioner.

9. On behalf of the industry the learned advocate has cited before me the following cases:

CHANDU LAL Vs.THE MANAGEMENT OF M/S. PAN AMERICAN WORLD AIRWAYS INC., - A.I.R. 1985 S.C. 1128.

USV LIMITED Vs. MAHARASHTRA GENERAL KAMGAR UNION AND ANOTHER - 1998 LABOUR AND INDUSTRIAL CASES 1294.

But I am unable to hold that any of the above authority is applicable on facts of the case before me. In view of the facts before me, I am unable to hold that the misconduct committed by the workman of such a serious nature so as to award the maximum punishment of dismissal from service. In my opinion, no prudent industrialist or a prudent person in view of the facts of the incident would ever come to the conclusion that the conduct of the workman is such that no faith could put in the workman that he must be immediately removed from the service. In the case of Chandulal (Supra), the workman had changed the trag of the goods which had come from Bangkok and substituted the track to show that the goods were not imported. Therefore the management thought that the conduct of the workman was such that the custom authority

had lost the confidence in the management and the custom authority were likely to detain Aircrafts as well as personnel. Thus, the misconduct in that case is a really serious. But even in that case the termination of the service was held illegal, but, instead of granting reinstatement, compensation of Rs.2 lakhs was awarded. In the second case of U.S.V. Limited (Supra), the allegation against the workman was that he had instigated the other co-workers to leave their place of work and to resort to illegal strikes. Therefore, in view of the said misconduct, the interference with the order of punishment of dismissal without giving any reason by the Industrial Tribunal was held to be vitiated and arbitrariness. Number of other authorities were also cited on behalf of the industry but they are not applicable to the facts before me.

10. The punishment of dismissal from service is not at all either appropriate or proper to the misconduct in question, the Labour Court was also not justified in holding that the misconduct is such that the misconduct must have resulted into employer loosing the confidence and therefore the reinstatement was not justified. In view of the facts and circumstances of the case, no doubt the workman had committed misconduct, he should not be allowed to go free without punishment. The workman in question was dismissed on 4.4.90, therefore, if he is reinstated without payment of backwages till the date of reinstatement and by further stoppage of two increments two years then the same would meet the ends of justice.

11. Therefore in view of the above discussions and reasons, I hold that Petition No.932/98 deserved to be rejected and the Petition No.1379/98 deserved to be partly allowed. The order of award passed by the Learned Labour Court in Reference No.2125/90 is set aside and in his place the following order is passed:

The workman Anantray H. Desai be reinstated in his original post from 1st September, 1998 without any backwages but continuity of his service and all other benefits and with stoppage of two increments for 2 years. Thus the Rule is made absolute in the above terms in Petition No.1379/98. Rule is discharged in Petition No.932/98. In the circumstances of the case, both the parties are directed to bear their respective costs in both the petitions.

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